

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

MARK GELAZELA,
Plaintiff,
v.
UNITED STATES OF AMERICA, et al.,
Defendants.

| Case No. 1:21-cv-01499-AWI-EPG (PC)

ORDER ADOPTING FINDINGS AND RECOMMENDATIONS

(ECF Nos. 13 & 20)

**ORDER SEVERING CLAIMS AND
DIRECTING CLERK TO OPEN NEW
ACTIONS**

Mark Gelazela (“Plaintiff”) is a former prisoner proceeding *pro se* and *in forma pauperis* in this action. The matter was referred to a United States magistrate judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On March 22, 2022, Magistrate Judge Erica P. Grosjean entered findings and recommendations, recommending that:

1. This case proceed on Plaintiff's claim against defendant Moore for deliberate indifference to his serious medical needs in violation of the Eighth Amendment and Plaintiff's Federal Tort Claims Act claim against the United States based on the treatment Plaintiff received (or failed to receive) for his knee;
 2. Plaintiff's ADA and Rehabilitation Act claims be dismissed with prejudice;
 3. Plaintiff's Bivens claims against defendants White, Lepe, Lehman, Blocher, FCI Mendota, and the Bureau of Prisons based on the treatment Plaintiff received (or failed to receive) for his knee be dismissed with prejudice and without leave to amend; and
 4. All other claims be dismissed without prejudice to Plaintiff bringing them in separate lawsuit(s) and without leave to amend.

(ECF No. 20, pgs. 22-23).

1 Plaintiff was provided an opportunity to file objections to the findings and
2 recommendations. Plaintiff filed his objections on April 9, 2022. (ECF No. 21).

3 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C) and Local Rule 304, this
4 Court has conducted a *de novo* review of this case. Having carefully reviewed the entire file,
5 the Court finds the findings and recommendations to be supported by the record and proper
6 analysis.

7 However, given Plaintiff's request in his objections that the unrelated claims be severed
8 instead of dismissed, the Court will sever the unrelated claims into new cases instead of
9 dismissing them.

10 Accordingly, THE COURT HEREBY ORDERS that:

- 11 1. The findings and recommendations issued by the magistrate judge on March 22,
12 2022, are ADOPTED in part.
- 13 2. This case proceeds on Plaintiff's claim against defendant Moore for deliberate
14 indifference to his serious medical needs in violation of the Eighth Amendment
15 and Plaintiff's Federal Tort Claims Act claim against the United States based on
16 the treatment Plaintiff received (or failed to receive) for his knee.
- 17 3. Plaintiff's ADA and Rehabilitation Act claims are dismissed with prejudice.
- 18 4. Plaintiff's Bivens claims against defendants White, Lepe, Lehman, Blocher, FCI
19 Mendota, and the Bureau of Prisons based on the treatment Plaintiff received (or
20 failed to receive) for his knee are dismissed with prejudice and without leave to
21 amend.
- 22 5. Plaintiff's claims that are currently identified as Claim III, Claim IV, and Claim
23 V are severed from the claims proceeding in this case.
- 24 6. Plaintiff's claim that is currently identified as Claim VI is severed from the
25 claims proceeding in this case.
- 26 7. The Clerk of Court is directed to:
 - 27 a. Open two new § 1983 actions for Plaintiff.
 - 28 b. Assign a random magistrate judge to both actions.

- 1 c. File and docket a copy of the following in both newly opened actions: the
2 order granting Plaintiff's application to proceed *in forma pauperis* (Doc. No.
3 11); Plaintiff's First Amended Complaint (Doc. No. 13); the screening
4 findings and recommendations (Doc. No. 20); and this order.
- 5 d. Provide Plaintiff with the case numbers for the newly opened actions.
- 6 8. Plaintiff has thirty days from the date the first new case is opened to file an
7 amended complaint that only includes Claims III, Claim IV, and Claim V. The
8 amended complaint shall be **no longer than twenty pages**.¹
- 9 9. Plaintiff has thirty days from the date the second new case is opened to file an
10 amended complaint that only includes claim VI. The amended complaint shall
11 be **no longer than twenty pages**.
- 12 10. The Clerk of Court is directed to reflect the dismissal of all defendants on the
13 Court's docket, except for defendant Moore and defendant United States of
14 America.
- 15 11. This case is referred back to the magistrate judge for further proceedings.

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17 IT IS SO ORDERED.

18 Dated: November 30, 2022



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SENIOR DISTRICT JUDGE

¹ Plaintiff will be required to file documents in the new actions through the mail. Plaintiff may request access to ECF in each new case.